

Montana Water Court
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FILED
02/17/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0138-R-2023
Stern, Anika
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Wirth Family LLC

CASE 41U-0138-R-2023
41U 96832-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41U 96832-00 was decreed with the following point of diversion and means of diversion:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	13	16N	5W	LEWIS AND CLARK
Period of Diversion:		APRIL 1 TO DECEMBER 1				
Diversion Means:		HEADGATE				

and the following DNRC point of diversion and means of diversion issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. Additionally, claim 41U 96832-00 was decreed with the following place of use issue remark:

THE PLACE OF USE, THOUGH NOT OBJECTED TO, WAS CHANGED TO REFLECT THE CHANGE IN ACRES IRRIGATED. THIS MAY BE SET FOR HEARING DURING THE PRELIMINARY DECREE PHASE.

3. No objections were filed.

PRINCIPLE OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

CONCLUSIONS OF LAW

1. The issue remark decreed on claim 41U 96832-00 is not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

2. The issue remarks decreed on claim 41U 96832-00 provided notice of changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from the claim in this Case with no changes to the elements of the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Wirth Family LLC
PO Box 225
Wolf Creek, MT 59648-0233

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96832-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WIRTH FAMILY LLC
PO BOX 225
WOLF CREEK, MT 59648 0233

Priority Date: MAY 19, 1896

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 238.00 GPM

THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 14.00

Source Name: PRUDEN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	13	16N	5W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO DECEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO DECEMBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	14.00		NWSW	13	16N	5W	LEWIS AND CLARK

Total: 14.00